IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5504 of 1998

with

CRIMINAL MISC.APPLICATION No 5505 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIMANSHU JAYANTILAL SHAH

Versus

HARSHADBHAI BHAGWATIPRASAD SHAH

Appearance:

MR MB GANDHI for Petitioners

MR MUKESH R SHAH for Respondent No. 1

MR ND GOHIL, APP, for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/05/2000

ORAL JUDGEMENT

1. Misc. Criminal Application No.5504/98 is an application under section 482 of the Criminal Procedure

Code filed by the original accused nos.1, 3 and 4 in respect of a complaint filed by respondent no.1, wherein the accused are alleged to have committed offences under sections 406, 420 read with section 114 of IPC. Misc. Criminal Application No.5505/98 is filed on the same set of facts and on the same complaint, by the accused no.2.

2. During the course of hearing and discussion of the present applications the focus of controversy has shifted somewhat.

3. Admittedly and on a plain reading of the present applications, the applications seek to quash the Criminal Complaint No.1683/98 filed before the learned Metropolitan Magistrate, Court No.16, Ahmedabad, and the prayer made in paragraphs 14(c) and 12(c) respectively is a twofold prayer, for quashing the process issued by the learned Magistrate as also for quashing the criminal complaint in question.

4. Thus, once we appreciate that this is a twofold approach by learned counsel for the original accused, I first examined the aspect of issuance of process, with the assistance of learned counsel for the respective parties.

5. After taking due instructions, learned counsel for the petitioner makes a statement at the bar that the learned Magistrate has issued process on the said criminal complaint without examining the complainant under section 200 Cr.P.C. or even without directing any investigation under section 156(3) Cr.P.C. There is, therefore, obviously a non-application of mind on the part of the learned Magistrate as also a violation of statutory provisions. Learned counsel for the respondent-complainant does not contest the statement at the bar made by the learned counsel for the petitioners.

6. In the premises aforesaid it appears that issuance of process on the part of the learned Magistrate is without application of mind and being in violation of section 200 Cr.P.C., the same is not justified and is required to be quashed and set aside. The process issued is, therefore, quashed and set aside.

7. It is clarified that the prayer for quashing the criminal complaint, under the present circumstances, does not arise and that question is not considered or decided on merits.

8. Learned Magistrate is directed to take up the

criminal complaint as filed before him and then to proceed to take action thereon in accordance with law.

9. These applications are accordingly partly allowed and rule is made absolute to the aforesaid extent.

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